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SMALL ENTITY COMPLIANCE GUIDE

Wireless Emergency Alerts; Amendments to Part 11 of the Commission's Rules Regarding the Emergency Alert System

FCC 18-4
PS Docket No. 15-91
PS Docket No. 15-94
Released January 31, 2018

This Guide is prepared in accordance with the requirements of Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It is intended to help small entities—small businesses, small organizations (non-profits), and small governmental jurisdictions—comply with the revised rules adopted in the above-referenced Federal Communications Commission (FCC or Commission) rulemaking docket. This Guide is not intended to replace or supersede these rules, but to facilitate compliance with the rules. Although we have attempted to cover all parts of the rules that might be especially important to small entities, the coverage may not be exhaustive. This Guide cannot anticipate all situations in which the rules apply. Furthermore, the Commission retains the discretion to adopt case-by-case basis approaches, where appropriate, that may differ from this Guide. Any decisions regarding a particular small entity will be based on the statute and any relevant rules.

In any civil or administrative action against a small entity for a violation of rules, the content of the Small Entity Compliance Guide may be considered as evidence of the reasonableness or appropriateness of proposed fines, penalties or damages. Interested parties are free to file comments regarding this Guide and the appropriateness of its application to a particular situation. The FCC will then consider whether the recommendations or interpretations in the Guide are appropriate in that situation. The FCC may decide to revise this Guide without public notice to reflect changes in the FCC's approach to implementing a rule, or it may clarify or update the text of the Guide. Direct your comments and recommendations, or calls for further assistance, to the FCC's Consumer Center:

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I. Objectives of the Proceeding

The WEA system is a tool for authorized federal, state and local government entities to geographically target alerts and warnings to the WEA-capable mobile devices of Participating Commercial Mobile Service (CMS) Providers' subscribers. The Warning, Alert and Response Network Act gives the Federal Communications Commission (Commission) authority to adopt "relevant technical standards, protocols, procedures and other technical requirements" governing WEA.¹ In September 2016, the Federal Communications Commission adopted the *WEA Further Notice of Proposed Rulemaking*,² seeking comment on measures to further improve emergency managers' ability to geographically target (geo-target) Alert Messages; to preserve Alert Messages on mobile devices for consumer review until they expire; and to define the extent of participation in WEA.³

On January 30, 2018, the Commission adopted a *Second WEA Report and Order and Second Order on Reconsideration*.⁴ The *Second WEA Report and Order* improved the requirements for the accuracy with which emergency managers can geographically target the delivery of WEA Alert Messages to areas within their jurisdiction to ensure that consumers will continue to be able to retrieve and review Alert Message content for 24 hours from receipt. The *Second WEA Report and Order* also defined what it means for a CMS Provider to participate in WEA "in whole" versus "in part." These requirements were meant to meet a compelling public interest need for WEA Alert Messages to be delivered in a more geographically targeted manner.⁵ In the *Second Order on Reconsideration*, the Commission extended the compliance deadline for CMS Providers to support Alert Messages initiated in Spanish to May 1, 2019.

II. Compliance Requirements

The requirements adopted in the *Second WEA Report and Order* are as follows:

¹ Warning, Alert and Response Network (WARN) Act, Title VI of the Security and Accountability for Every Port Act of 2006, Pub. L. No. 109-347, 120 Stat. 1884, § 602(a), codified at 47 U.S.C. § 1201, et seq., § 1201(a) (2006) (WARN Act).

² 81 Fed. Reg. 78539 (Nov. 8, 2016).

³ *Wireless Emergency Alerts; Amendments to Part 11 of the Commission's Rules Regarding the Emergency Alert System*, PS Docket Nos. 15-91, 15-94, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 11112 (2016) (*WEA R&O* and *WEA FNPRM*).

⁴ *Wireless Emergency Alerts; Amendments to Part 11 of the Commission's Rules Regarding the Emergency Alert System*, PS Docket Nos. 15-91, 15-94, Second Report and Order and Second Order on Reconsideration, 33 FCC Rcd 1320 (2018) (*Second WEA Report and Order* and *Second WEA Order on Reconsideration*). This Small Entity Compliance Guide also encompasses the Final Regulatory Flexibility Analysis to the *Second WEA Report and Order* and the Supplemental Final Regulatory Flexibility Analysis to the *Second WEA Order on Reconsideration*.

⁵ *Id.* at 1324, para. 6.

A. Geo-targeting of Alert Messages (47 CFR § 10.450)

- Participating CMS Providers are required to deliver Alert Messages to an area that matches the target area specified by alert originators.⁶
- If some or all of a Participating CMS Provider's network infrastructure is technically incapable of matching the specified target area, Participating CMS Providers must deliver the Alert Message to an area that best approximates the target area on and only on those aspects of its network infrastructure that are incapable of matching the target area.⁷
- CMS Providers are no longer allowed to transmit an Alert Message to an area not larger than the propagation area of a single transmission site.⁸
- For existing mobile devices that cannot be upgraded, Participating CMS Providers must deliver the Alert Message to their “best approximation” of the target area.⁹
- In matching the target area, CMS Providers may not limit emergency managers’ ability to use the full 360 characters of alphanumeric text allocated for displayable WEA Alert Messages.¹⁰
- Participating CMS Providers can transmit polygon coordinates to mobile devices without affecting the 360-character allotment for displayable Alert Message text by using lossless compression techniques or limiting the number of vertices used to describe the target area.¹¹
- CMS Providers that choose to use device-based geo-fencing to match the target area are only required to transmit 76 vertices of up to four decimal places specifying the target area to a mobile device.¹²

B. Consumer Disclosure Requirements (47 CFR § 10.240)

- CMS Providers participating in WEA “in part” must provide notice to consumers that WEA may not be available on all devices or within the entire service area, as well as details about the availability of WEA service.
- CMS Providers participating in WEA “in part” must disclose the extent to which enhanced geo-targeting is available on their network and devices at the point of sale, and the benefits of enhanced geo-targeting.¹³

⁶ *Id.*

⁷ *Id.* at 1327, para. 9. This requirement applies only to new mobile devices offered for sale after November 30, 2019 and to existing devices capable of being upgraded to support this matching standard. *Id.* at 1327-28, para. 9.

⁸ *Id.* at 1328, para. 9, n.47.

⁹ *Id.* at 1328, para. 9.

¹⁰ *Id.* at 1326, para. 8.

¹¹ *Id.*

¹² *Id.* at 1327, para. 8, n.43.

¹³ *Id.* at 1333, para. 15.

- The Commission suggests, but does not require, that Participating CMS Providers disclose to consumers at the point of sale that if they have not enabled location services on their devices, they may receive Alert Messages that are not relevant to them.

C. Preservation of Alert Messages (47 CFR § 10.500)

- All WEA-capable mobile devices must preserve Alert Messages in a consumer-accessible format and location for at least 24 hours after the Alert Message is received on the subscriber's mobile device, or until deleted by the subscriber.
- For those mobile devices that do not currently preserve Alert Messages, the record shows this capability can be enabled through a software update.¹⁴
- Because there is not a uniform approach to the preservation of Alert Messages, compliance with this requirement does not implicate changes to the provision of WEA that would necessitate standards development.¹⁵

D. Defining WEA Participation (47 CFR § 10.10)

- CMS Providers are considered to participate in WEA “in whole” when they agree to transmit WEA Alert Messages in a manner consistent with the technical standards, protocols, procedures, and other technical requirements implemented by the Commission in the entirety of their geographic service area, and when all mobile devices that they offer at the point of sale are WEA-capable.¹⁶
- CMS Providers participate in WEA “in part” when they agree to transmit WEA Alert Messages in a manner consistent with the technical standards, protocols, procedures, and other technical requirements implemented by the Commission in some, but not in all, of their geographic service areas, or not all mobile devices that they offer at the point of sale are WEA-capable.¹⁷
- CMS Providers that participate in WEA “in part” need not offer WEA on all devices available at the point of sale.

E. Spanish Language (47 CFR § 10.480)

- CMS Providers must align the Spanish-language alert implementation compliance timeframe with the 360-character length requirement timeframe to ensure that Spanish-language alerts are as effective as possible.¹⁸

¹⁴ *Id.* at 1335, para. 18.

¹⁵ *Id.* at 1336, para. 20.

¹⁶ 47 CFR § 10.10(k).

¹⁷ *Id.* § 10.10(l).

¹⁸ *Second WEA Order on Reconsideration* at 1348, para. 50.

III. Recordkeeping and Reporting Requirements

The requirements to preserve Alert Messages and to report additional disclosures and renewal of CMS Provider election to participate in WEA adopted in the *Second WEA Report and Order* and *Second Order on Reconsideration* are described above in the Compliance Requirements section.

IV. Implementation Dates

The effective dates for the requirements in the *Second WEA Report and Order* and *Second Order on Reconsideration* are as follows:

- 47 CFR §§ 10.10 (Defining “in whole” and “in part” participation) and 10.210 (WEA participation election procedures) became effective on April 30, 2018.
- 47 CFR § 10.240 (Consumer disclosure requirements) shall become effective on December 27, 2018.
- 47 CFR §§ 10.450¹⁹ (Geo-targeting) and 10.500 (Alert preservation) shall become effective on November 30, 2019.
- CMS Providers are required to update their WEA election status by December 27, 2018.
- 47 CFR § 10.480 (Support for Spanish language Alert Messages) shall become effective as of May 1, 2019.

V. Internet Links

A copy of the *Second WEA Report and Order* and *Second Order on Reconsideration* is available at: https://transition.fcc.gov/Daily_Releases/Daily_Business/2018/db0131/FCC-18-4A1.pdf.

A copy of the Federal Register publication of the *Second WEA Report and Order* and *Second Order on Reconsideration* summary is available at: <https://www.federalregister.gov/documents/2018/02/28/2018-03990/wireless-emergency-alerts-emergency-alert-system>.

A copy of the corrected Federal Register publication of the *Second WEA Report and Order* and *Second Order on Reconsideration* summary is available at: <https://www.federalregister.gov/documents/2018/03/13/2018-04969/wireless-emergency-alerts-emergency-alert-system-correction>.

A copy of the Federal Register publication of OMB Approval of the *Second WEA Report and Order* and *Second Order on Reconsideration*’s Information Collection Requirements for 47 CFR § 10.240 is available at: <https://www.federalregister.gov/documents/2018/08/29/2018-18704/election-whether-to-participate-in-the-wireless-emergency-alert-system>.

¹⁹ If the standards process is delayed or prolonged through no fault of a Participating CMS Provider, the Commission may consider waiver of this requirement.